NO. 87-1811

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In the Supreme Court of the United States

OCTOBER TERM, 1987

WOODFIN M. VOINCHE,
Petitioner

VERSUS

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT DAVID ROCKEFELLER'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Fifth Circuit was correct in affirming the district court's dismissal of petitioner's claim against respondent, David Rockefeller, pursuant to Fed. R. Civ. P. 12(b)(6), where petitioner made no allegations against nor sought any damages from Rockefeller in his complaint, but rather joined him as a defendant only in the "spirit of discovery"?

LIST OF INTERESTED PERSONS

1. WOODFIN M. VOINCHE
   Plaintiff/Petitioner

2. UNITED STATES DEPARTMENT OF JUSTICE
   Defendant/Respondent

3. SOUTH CENTRAL BELL
   Defendant/Respondent

4. AMERICAN TELEPHONE AND TELEGRAPH
   Defendant/Respondent

5. DAVID ROCKEFELLER
   Defendant/Respondent

6. EDWIN W. EDWARDS
   Defendant/Respondent

7. RAYMOND J. LABORDE
   Defendant/Respondent

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Respondent, David Rockefeller, respectfully prays that the Petition for Writ of Certiorari filed by petitioner in this case be denied for the reasons set forth below.

STATEMENT OF JURISDICTION

Petitioner, Woodfin Voinche, purports to appeal from a *per curiam* decision from the United States Court of Appeals for the Fifth Circuit. However, the appeal is improvidently taken because no Act of Congress was held unconstitutional by the Court below and because this case does not involve a decision from a district court of three judges. 28 USC §§ 1252 and 1253. Thus, in accordance with 28 USC § 2103, petitioner's papers should be regarded and acted upon as a petition for certiorari.

STATEMENT OF THE CASE

Petitioner, Woodfin Voinche is *pro se.* He filed a suit entitled "FOIA/Privacy Act Complaint" against the United States Department of Justice for its alleged failure to adequately respond to his Freedom of Information Act (FOIA) request, and he joined as defendants American Telephone & Telegraph (AT&T), South Central Bell, Edwin W. Edwards, Raymond J. Laborde and David Rockefeller. He made no allegations nor sought any damages against these latter defendants, but rather joined them "in the spirit of discovery and pursuant to R.19(a), Fed.R.Civ.P." (Complaint, "Parties," Paragraphs 3-7).

Rockefeller moved for a dismissal pursuant to Fed.R.Civ.P. 12(b)(2) on the grounds that the Court lacked personal jurisdiction over him, and pursuant to Fed.R.Civ.P. 12(b)(6) on the grounds that the complaint failed to state a claim upon which relief could be granted. Rockefeller further moved for sanctions pursuant to Rule 11. AT&T, South Central Bell, Edwards and Laborde joined in and filed their own 12(b)(6) Motions to Dismiss, and Laborde joined in and filed his own Motion for Sanctions.

In its ruling of September 15, 1987, the District Court pretermitted Rockefeller's 12(b)(2) Motion, but it dismissed Rockefeller and all of the other private defendants pursuant to their 12(b)(6) motions. The District Court denied the Motions for Rule 11 Sanctions, but "put Mr. Voinche on notice that if he proceeds to contravene the strictures of Rule 11, we will not hesitate to impose substantial sanctions in the form of costs and attorney's fees." Ruling of September 15, 1987. (Attached as Appendix A, p.4a, to Petitioner's Petition).

Subsequently, the United States Department of Justice moved for summary judgment on the grounds that it properly responded to Voinche's FOIA request. The

District Court granted summary judgment in favor of the Department of Justice in its ruling of October 5, 1987.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed both decisions of the District Court in its *per curiam* opinion of February 4, 1988. Voinche now seeks review of this decision.

ARGUMENT

There are two separate and distinct holdings over which Voinche seeks review—the summary judgment in favor of the Department of Justice and the dismissal of all private defendants pursuant to Fed.R.Civ.P. 12(b)(6). The former is not addressed herein, but for the reasons enumerated below, certiorari should not be granted over the latter.

I. The Dismissal Of Rockefeller And The Other Private Defendants Pursuant to Fed. R. Civ. P. 12(b)(6) Was Proper

One of the most basic and easily understood rules of legal pleading is that one cannot sue another unless he advances some claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). Voinche ran afoul of this rule. His complaint states no claim whatsoever against Rockefeller and the other private defendants, but instead names them only in the "spirit of discovery," and asserts that they are necessary parties pursuant to Fed.R.Civ.P. 19(a). Where a complaint states no claim for relief against defendants, much less a defective claim for relief, it follows *a fortiori* that those defendants are entitled to dismissal pursuant to Rule 12(b)(6).

Upon finding that Voinche would be entitled to no relief even assuming all of his well-pleaded allegations to be true, the District Court and the Court of Appeals properly

held that Rockefeller and the other private defendants should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6). Wright & Miller, *Federal Practice & Procedure,* Vol. 5, Sec. 1355, p.94 (1984). This conclusion was inescapable given the fact that Voinche made *no* allegations whatsoever against Rockefeller and the other private defendants. Indeed, Rockefeller is not even mentioned anywhere in the complaint apart from Paragraph 5 under "Parties," where Voinche states only that "Mr. Rockefeller is joined as a party defendant in the spirit of discovery and pursuant to R.19(a) Fed.R.Civ.P."

The notion that an individual can be made a defendant solely in the spirit of discovery is not worthy of serious discussion. Even a layman with no legal background must be expected to understand that lawsuits are filed to seek redress for damages—not to discover information. Surely, even the most naive layman understands that information can be discovered from a person without naming that person as a defendant to a lawsuit. The naming of Rockefeller and the other private defendants in the "spirit of discovery" was not only improper, but an abuse of these legal proceedings.

The naming of Rockefeller as a defendant pursuant to Fed.R.Civ.P. 19(a) is equally ludicrous. Rule 19(a) provides only that a person can be joined as a party to an action when complete relief cannot be accorded in his absence, or when he would (1) be unprotected or (2) expose existing parties to the risk of multiple or inconsistent obligations. As explained above, Rockefeller's presence is certainly not needed for complete relief where no relief is sought from him. Moreover, Rockefeller claims no interest in these proceedings and his absence will have no effect on the other defendants, who themselves have been dismissed upon their own motions. Thus, the District Court correctly found Voinche's "reference to Rule 19(a) irrelevant."

Ruling of September 15, 1987. (Attached as Appendix A, p.4a, to Petitioner's Petition).

The invocation of Rule 19(a) in what is styled a "FOIA/Privacy Act Complaint" is particularly disturbing; a private party can never be made a defendant to a suit brought pursuant to these Acts. *Brown Bey v. United States,* 720 F.2d 467, 469 (7th Cir. 1983); *Bruce v. United States,* 621 F.2d 914, 916, n.2 (8th Cir. 1980) and *Parks v. United States Internal Revenue Service,* 618 F.2d 677, 684 (10th Cir. 1980). As the District Court below held, "[B]y their own terms and a legion of case law, the FOIA and Privacy Act authorize private civil actions only against an agency, not against any individual." Ruling of September 15, 1987. (Attached as Appendix A, p.3a, to Petitioner's Petition).

Thus, Voinche's Complaint not only failed to state a claim upon which relief could be granted, but in naming private defendants, it was improper as a matter of law. Accordingly, the dismissal of Rockefeller and the other private defendants, as affirmed by the Court of Appeals, should not be disturbed by this Honorable Court.

II. The Granting of Ceritorari Would Not Advance The Law

This case is fact bound. The Questions presented by petitioner himself turn upon the particular facts present in this case. Indeed, while Voinche's 45 page brief is replete with irrelevant and scandalous assertions of fact, it makes reference to no pressing legal issues, much less any conflict in decisions from the courts below. For these reasons, the law would not be advanced by the granting of certiorari, and it is therefore respectfully submitted that certiorari

should be denied by this Court.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing pleading have been served on petitioner and all counsel of record by placing copies of same in the United States mail, postage prepaid, properly addressed this 27th day of May, 1988.

THOMAS J. WYLLIE